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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TEAM WORLDWIDE CORPORATION
Patent Owner & Appellant

Appeal 2010-002223
Reexamination Control 90/008,926
Patent 6,793,469
Technology Center 3900

Before WILLIAM F. PATE, III, RICHARD M. LEBOVITZ, and
KEVIN F. TURNER, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” shown on the PTOL-90A cover letter attached to this decision.

This is a decision on the appeal by the Patent Owner of U.S. Patent No. 6,793,469 (filed Dec. 18, 2000) of the Patent Examiner's rejections of claims 1 and 14-17 in an Ex Parte Reexamination. The Board's jurisdiction for this appeal is under 35 U.S.C. §§ 6(b), 134, and 306. We reverse.

STATEMENT OF THE CASE

A Request for Ex Parte Reexamination of claims 1 and 14-17 of U.S. Patent No. 6,793,469 (issued Sept. 21, 2004) (hereinafter '469 patent), was filed by a third-party Requester (hereinafter Requester) on November 19, 2007 pursuant to 35 U.S.C. §§ 302-307 and 37 C.F.R § 1.510 (hereinafter Request). Claims 2-13 are also pending, but are not subject to reexamination (Final Office Action 1 (mailed Jan. 5, 2009)). An Oral Hearing before the Board was held June 16, 2010.

Reexamination was sought on the basis of prior art publications to Chaffee, Wang, Jones, San-Jou, and Wortman, which the Requester asserted invalidated the claims under 35 U.S.C. §§ 102 and 103 (Request 5-6). The Request for Reexamination was granted. (Order Granting Ex Parte Reexamination (February 12, 2008).) Prosecution ensued before the Examiner. By the time prosecution was closed, only the originally proposed rejection under § 102 over Chaffee² remained, while the Requester's other proposed rejections had been withdrawn or not adopted by the Examiner. However, the claims were also rejected over a new reference, Owen³ – under § 102 as anticipated by Owen and under § 103 as obvious in view of Owen

² Switchable Inflation Device, U.S. Patent No. 6,237,653 (filed Aug. 13, 1999) (issued May 29, 2001) issued to Robert B. Chaffee.

³ Inflator/Deflator with Molded Housing, U.S. Patent No. 4,678,014 (filed Mar. 27, 1986) (issued July 7, 1987) issued to Charles B. Owen et al.

and Chaffee (Non-final Office Action (mailed Sept. 23, 2008); Final Office Action 3, 5, & 7). The Patent Owner, Team Worldwide Corporation, who is also the “Appellant” in this proceeding, appeals these rejections.

Claims 1 and 14-17 stand rejected by the Examiner as follows:

Claims 1, 14, and 16 under 35 U.S.C. § 102(a) & (e) as anticipated by Chaffee (Ans. 4);

Claims 14-17 under 35 U.S.C. § 102(b) as anticipated by Owen (Ans. 6);

Claims 1, 16, and 17 under 35 U.S.C. § 103(a) as obvious in view of Owen and Chaffee (Ans. 8); and

Claim 14 under 35 U.S.C. § 101 as claiming the same invention of claim 1 of copending Application No. 10/647,814 (Ans. 10).

Claims 1 and 14 are representative and read as follows:

1. An inflatable product including: an inflatable body; a socket built in the inflatable body; an electric pump, including a pump body and an air outlet, connected to the socket to pump the inflatable body, wherein the pump body is wholly or partially located in the socket; at least one battery disposed in the electric pump; and a connector provided on the electric pump for connecting an external power, whereby the electric pump is actuated by the at least one battery or the external power.

14. An inflatable product including: an inflatable body; a socket built in the inflatable body; an electric pump, including a pump body and an air outlet, connected to the socket to pump the inflatable body, wherein the pump body is wholly or partially located in the socket; a connector provided on the electric pump for connecting an external power to actuate the electric pump.

CLAIM INTERPRETATION

Legal Principles

During patent examination, claims

are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990); *accord [In re] Bass*, 314 F.3d [575,] 577 [(Fed. Cir. 2002)] (“[T]he PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification.”); *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) (“Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach.”); [*In re] Hyatt*, 211 F.3d [1367,]1372 [(Fed. Cir. 2000)].

In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004).

This mode of claim interpretation also applies in reexamination proceedings.

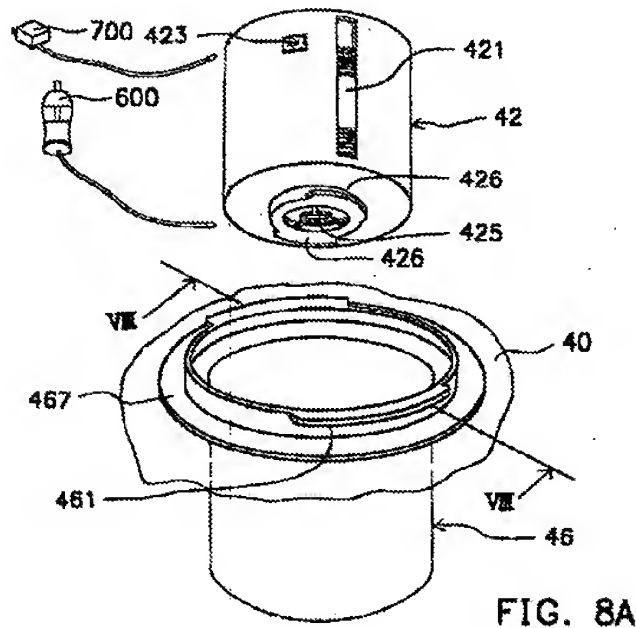
In re Translogic Tech., Inc., 504 F.3d 1249 (Fed. Cir. 2007).

“[D]uring patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. . . . An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.” *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). The “mode of claim interpretation that is used by courts in litigation, when interpreting the claims of issued patents in connection with determinations of infringement or validity” is not applicable “during prosecution of a pending application before the PTO.” *Id.* at 321.

Analysis

The claims in the '469 patent are drawn to an inflatable product comprising an inflatable body, a socket built into the body, and an electric pump. The inflatable body in the embodiments described in the Specification is an airbed (Spec.⁴ col. 1, ll. 25-32). The pump is recited in the claims to have a “pump body and an air outlet,” where “the pump body is wholly or partially located in the socket.” The meaning of the term “pump body” is in dispute in this appeal. Claim interpretation is therefore the appropriate starting point in our analysis because only when the scope of a claim has been determined by interpreting the words in a claim, can the claim be properly compared to the prior art.

Figure 8A of the '469 patent is reproduced below:



⁴ “Spec.” refers to the Specification of the '469 patent.

Figure 8A is an exploded perspective of a pump, socket, and an inflatable airbed. According to the '469 patent, the electric pump is 42, the inflatable body is 40, the built in socket is 46, and the air outlet with outward flanges are shown as 425 and 426, respectively (Spec., col. 4, ll. 3-29). During operation, the pump 42 is inserted into the socket 46 where the air outlet 425 fits into a corresponding hole in the socket (*id.* at col. 4, ll. 44-54).

The term “pump body” does not appear in the written description of the '469 patent, but it was recited in the issued claims, the same claims being reexamined in this proceeding.

Although the term is not defined in the patent, its meaning can be discerned by how it is used in the claims. All the independent claims recite “an electric pump, including a pump body and an air outlet.” Thus, persons of ordinary skill in the art would recognize that the pump has two parts: a body and an air outlet. This understanding is consistent with the patent drawings (Fig. 8A) which show a cylindrical body (at 42) and an outwardly extending air outlet (425) (*id.* at col. 4, ll. 3-29). The drawings can be properly relied upon to provide a description of the invention. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991) (“[U]nder proper circumstances, drawings alone may provide a ‘written description’ of an invention as required by § 112.”)

In addition to consulting the Specification for guidance as to a claim’s meaning, it is also appropriate to refer to a dictionary as evidence of how a word would be construed by persons of ordinary skill in the art. Citing a general purpose dictionary, Appellant argued that a “body” is defined as the “main, central, or principal part” and is distinct from the air outlet (Appeal Br. 7). Therefore, Appellant argued that the “body” of the claimed electric

pump would be interpreted to be the separate part located above the air outlet 425 because it forms the pump's main or central part.

Appellant's definition of the "body" is consistent with how the term is used in the claims and shown in the '469 patent drawings. In sum, the term "pump body" is interpreted to be the main part of the electric pump and to be a separate and distinct element from the air outlet.

ANTICIPATION BY CHAFFEE

Claims 1, 14, and 16 stand rejected under 35 U.S.C. § 102(a) & (e) as anticipated by Chaffee (Ans. 4).

Statement of the Issue

Does Chaffee describe an electric pump having a "pump body . . . wholly or partially located in the [built in] socket" of an inflatable body as recited in the claims?

Legal Principles

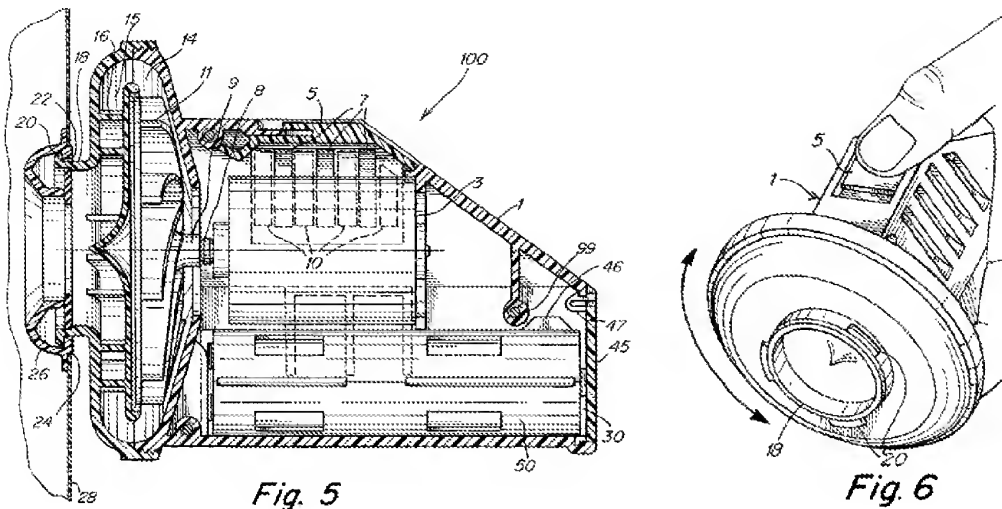
Because the hallmark of anticipation is prior invention, the prior art reference – in order to anticipate under 35 U.S.C. § 102 – must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements "arranged as in the claim." *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983).

Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008).

Findings of Fact

1. Chaffee describes a device which can be used to inflate and pressurize inflatable articles (Chaffee, col. 2, l. 65 to col. 3, l. 4).

2. Figures 5 and 6 of Chaffee are reproduced below:



Figures 5 & 6 show Chaffee's fluid moving device with the following structural elements:

3. 100, fluid moving device;
4. 1, housing with motor 3 (col. 3, ll. 31-34);
5. 18, fluid transfer orifice (*id.* at col. 6, ll. 60-65);
6. 20, "projecting tabs 20 located on the housing [1] proximate to a fluid transfer orifice 18, which engage with mating projections 22 of the inflation valve [26] located near an outer rim 24 of the inflation valve" (*id.*);
7. 28, inflatable receptacle ("an inflatable receptacle as used herein is to include any receptacle that can receive a fluid . . . for example, mattresses, toys, floats, and the like") (*id.* at col. 3, ll. 16-21); and
8. 26, inflation valve in the inflatable receptacle (*id.* at col. 3, ll. 13-16 & col. 6, ll. 56-57).

Discussion

Anticipation requires that every element of the claimed invention must be found in a single prior art reference, arranged as in the claim. *NetMoneyIN, Inc.*, 545 F.3d at 1369. In this case, the Examiner found all elements of the claim to have been met by Chaffee's fluid moving device and inflatable receptacle. The Examiner found (Ans. 4-5):

- Chaffee described the “electric pump” of claim 1 (fluid moving device 100 and motor 3; FF3 & 4) with a “pump body” (housing 1; FF4) and an “air outlet” (fluid transfer orifice 18; FF5);
- Chaffee also disclosed an “inflatable body” (inflatable receptacle 28 (FF7) with a “socket built in” (the space into which the orifice 18 is inserted) “bound by” inflation valve 26; FF6 & 8);
- the air outlet (orifice 18) was inserted into the socket; and
- the air outlet (orifice 18) was part of the pump body (housing 1), and therefore “the pump body is wholly or partially located in the socket” as recited in the claims.

In determining that all the elements of the claim were met by Chaffee, the Examiner interpreted “pump body” to include all parts of the electric pump, including the air outlet (orifice 18) and tabs (FF6) used to connect the orifice to the socket (Ans. 12).

The Examiner's interpretation is not reasonable. During reexamination proceedings, claims are given their broadest reasonable interpretation as they would be understood by persons of ordinary skill in the art. As discussed above, when the claims are read in light of the Specification using the ordinary customary meaning of the claim terms, persons of ordinary skill in the art would have interpreted the “pump body”

to be a separate and distinct element from the “air outlet.” Consequently, the ordinary skilled worker would not have found that Chaffee’s orifice 18 is part of the pump body nor that its placement in the inflation valve socket 28 met the limitation of the “pump body . . . wholly or partially located in the socket” as recited in the claims. To put it simply, orifice 18 is not a part of the pump body.

The Examiner cited the description of “housing” at column 6, lines 60-65 of Chaffee to support his interpretation. This passage describes the projecting tabs (F6) as part of the housing 1. However, Chaffee’s housing does not correspond to the “pump body” of claims 1, 14, and 16 as that term would be reasonably interpreted by one of ordinary skill in the art.

In sum, we reverse the rejection of claims 1, 14, and 16 as lacking novelty over Chaffee.

In reaching our conclusion that the claims are not anticipated by Chaffee, we note that we do not agree with Appellant that the meaning of the term “pump body” must be construed in light of the prosecution history of the ‘469 patent and certain statements made therein by the Examiner (Appeal Br. 8-11). During proceedings before the PTO, claim are given their broadest reasonable interpretation in light of the *specification* and the *ordinary meaning* of the claim terms as they would be understood by a skilled worker. Prosecution history may at times be relevant as to how claim terms would be understood by the ordinary skilled worker. However, the Examiner is not necessarily an ordinary skilled worker, unless the evidence establishes so. Consequently, it is the Examiner’s evidence of the term’s meaning that is relevant to claim interpretation. We are not compelled to adopt his interpretation. The standards for claim interpretation during

proceedings before the PTO and during litigation are different because during PTO prosecution claims can be amended, but during litigation they cannot. *In re Zletz*, 893 F.2d at 321-22.

ANTICIPATION BY OWEN

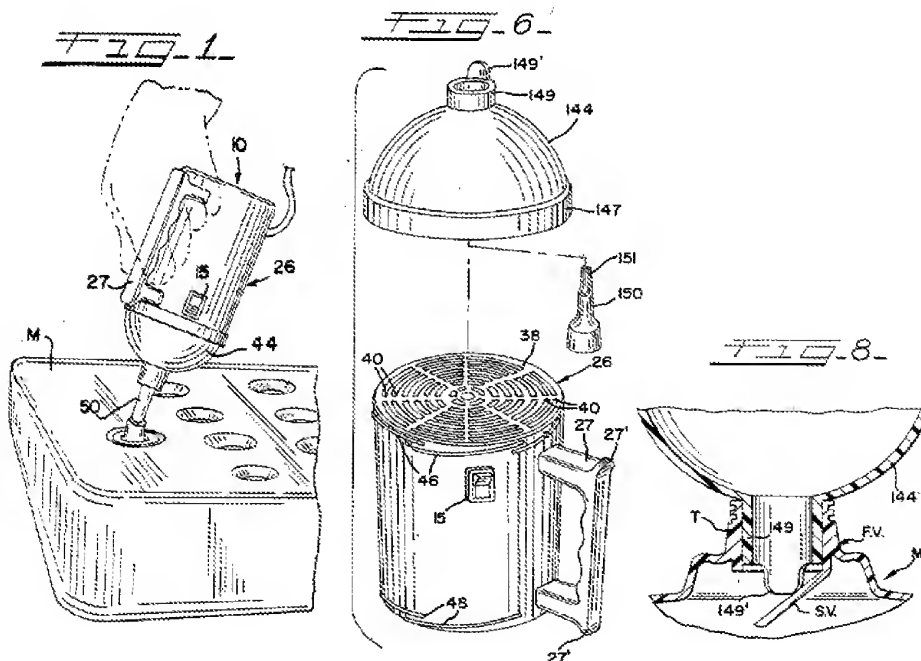
Claims 14-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by Owen (Ans. 6).

Statement of the Issue

Does Owen describe an electric pump having a “pump body . . . wholly or partially located in the [built in] socket” of an inflatable body as recited in the claims?

Findings of Fact

9. Owen describes a hand-holdable inflatable/deflating device for inflating or deflating an article (Owen abstract).
10. Figures 1, 6, and 8 are reproduced below:



As shown above, Figure 1 depicts a perspective view of the hand held inflation/deflation device; Figure 6 depicts a partially exploded view of the nozzle portion of the device, and Figure 8 depicts a cross section view of the fill valve construction. The following elements are shown:

11. M, inflatable article, illustrated as air mattress M (Owen, col. 3, ll. 66-68);
12. 10, inflating/deflating device (*id.* at col. 3, ll. 64-66);
13. 26, injection molded housing within which electric motor 12 is positioned (*id.* at col. 4, ll. 3-5 & 25-28);
14. 44 (Fig. 1) and 144 (Fig. 6) tapered nozzle which is configured for detachable connection to the associated inflatable article for inflation or deflation of the article (*id.* at col. 5, ll. 55-60; col. 6, ll. 21-24).
15. 49 (shown in Fig. 1, but not labeled) & 149 (Fig. 6), connector portion of nozzle 44 and 144 to connect to inflatable article (*id.* at col. 6, ll. 16-21 & 25-27); and
16. 49 and 149 serve as air outlets or inlets for inflating or deflating, respectively, the article.
17. Figure 8 is a fill valve of the inflatable article with tubular portion T in which connector nozzle 149 is inserted (*id.* at col. 3, ll. 48-54 & col. 6, ll. 40-57).

Discussion

The issue in this rejection is whether the tapered nozzle 44/144 comprising connector 49/149 of Owen's inflating/device (FF14 & F15) meets the limitation of a "pump body . . . wholly or partially located in the [built in] socket" of an inflatable body as recited in claim 14. The Examiner

found that the elements 26/44/49 (Fig. 1) and 26/144/149 (Fig. 6) constituted the pump body of Owen's device (Ans. 6; FF13-15). Relying on Figure 8 of Owen, the Examiner found that the tubular portion T of the inflatable device served as a "socket" of the inflatable device, that the connector 149 was inserted in it, and that therefore the pump body was "partially located" in the socket as required by the claimed (*id.*)

The Examiner erred in finding that the tapered nozzle 44/144 comprising connector 49/149 of Owen's inflating/deflating device served as a "pump body" as that term is properly interpreted in light of the '469 patent Specification and its ordinary, customary meaning. Connector 49/149 serves as an air inlet/outlet (FF15-16). This is the portion of Owen's device which is located in the socket T of the inflatable article (FF17). The claims, as discussed in the "Claim Interpretation" section, make a clear distinction between the pump body and the air outlet. It was therefore not reasonable of the Examiner to identify the connector 49/149 – the air inlet/outlet – as the pump body of Owen. Accordingly, we are compelled to reverse the rejection of claims 14-17 as lacking novelty over Owen.

OBVIOUSNESS OVER OWEN AND CHAFFEE

Claims 1, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Owen and Chaffee (Ans. 8).

With respect to claim 1, the Examiner relied on Owen as describing the recited claim limitations, except for the battery disposed in the electric pump. With respect to claim 16 and 17, the Examiner relied on Owen as describing all of the recited limitations, except for a portion of the electric pump and the socket being matched to prevent air leakage between them.

However, as discussed above, neither Owen nor Chaffee alone describe a “pump body . . . wholly or partially located in the socket” of an inflatable body - a requirement of claims 1, 16, and 17. Accordingly, we reverse the rejection of these claims for the reasons discussed previously under the anticipation rejections.

PROVISIONAL DOUBLE-PATENTING REJECTION

Claim 14 stands provisionally rejected under 35 U.S.C. § 101 as claiming the same invention of claim 1 of copending U.S. Patent Application No. 10/647,814 (filed Aug. 25, 2003) (Ans. 10).

It is premature for the Board to address the Examiner’s provisional rejection of the claims. *Ex parte Moncla et al.*, Appeal No. 2009-006448 (B.P.A.I., decided June 22, 1010). Consequently, we do not reach the provisional rejection.

CONCLUSIONS OF LAW & SUMMARY

Chaffee does not describe an electric pump having a “pump body . . . wholly or partially located in the [built in] socket” of an inflatable body as recited in the claims. The rejection of claims 1, 14, and 16 under 35 U.S.C. § 102(a) & (e) as anticipated by Chaffee is reversed.

Owen does not describe an electric pump having a “pump body . . . wholly or partially located in the [built in] socket” of an inflatable body as recited in the claims. The rejection of claims 14-17 under 35 U.S.C. § 102(b) as anticipated by Owen is reversed.

The rejection of claims 1, 16, and 17 under 35 U.S.C. § 103(a) as obvious in view of Owen and Chaffee is reversed.

TIME PERIOD FOR RESPONSE

Requests for extensions of time in this *ex parte* reexamination proceeding are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

REVERSED

KMF

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